

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED

JAN 14 2022

Matthew Thelen
CLERK

SHANE D. WALIEZER,

Plaintiff,

vs.

BRAD HOWELL, Sheriff Codington
County, professionally and individually;
OFFICER JOHN DOE #1, Deputy Sheriff
Codington County, professionally and
individually; and OFFICER JOHN DOE #2,
Deputy Sheriff Codington County,
professionally and individually;

Defendants.

1:21-CV-01027-CBK

ORDER FOR COLLECTION OF
APPELLATE FILING FEE

Plaintiff, a pre-trial detainee, filed a *pro se* complaint under 42 U.S.C. § 1983. His application to proceed *in forma pauperis* without the prepayment of the filing fee was denied because plaintiff had been assessed three strikes pursuant to 28 U.S.C. § 1915(g). Plaintiff filed a motion to vacate that order on the basis that this action was filed before the third strike was assessed. Prior to a ruling on his motion to vacate, plaintiff filed an interlocutory appeal of the order denying his application to proceed *in forma pauperis*. While that order was on appeal, I vacated the order, authorized plaintiff to proceed *in forma pauperis*, and dismissed the complaint upon initial review for failure to state a claim upon which relief could be granted pursuant to 28 U.S.C. § 1915A(b)(1).

I denied Plaintiff's application to proceed on appeal *in forma pauperis* because his appeal was premature and because the order that he appealed from was vacated, thus rendering his premature appeal moot. The United States Court of Appeals denied plaintiff's application to proceed on appeal *in forma pauperis* because plaintiff had three strikes prior to filing the appeal. Waliezer v. Howell, et al., 8th Cir. No. 21-3539

(November 10, 2021). Plaintiff was ordered to pay the appellate filing fee or demonstrate eligibility to proceed on appeal *in forma pauperis*. He failed to do so. The Eighth Circuit dismissed his appeal and remanded the case to this Court for the collection of the appellate filing fee. Waliezer v. Howell, et al., 8th Cir. No. 21-3539 (January 3, 2022).

“[T]he assessment of appellate filing fees occurs upon the filing of a notice of appeal or the filing of a motion to proceed in forma pauperis . . . and fixes responsibility for payment sooner or later of the fees in full.” Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). “Irrespective of the court’s approach to the merits of the appeal, the prisoner’s liability for the full payment of the appellate filing fees under the PLRA continues until full payment has been made which may be long after we have disposed of the appeal.” *Id.* Plaintiff must pay the full \$505.00 appellate filing fee. Plaintiff is unable to pay an initial partial filing fee as required by 28 U.S.C. § 1915(b)(1). He is allowed, under 28 U.S.C. § 1915(b)(2) to pay the full amount of the filing fee in installments.

Now, therefore,

IT IS ORDERED:

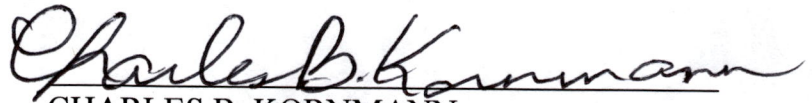
1. Plaintiff shall pay the full amount of the \$505.00 appellate filing fee and may do so by paying in installments.

2. Pursuant to 28 U.S.C. § 1915(b)(2), whenever the amount in plaintiff’s prison trust account exceeds \$10.00, the institution having custody of the plaintiff is hereby directed to forward monthly payments that equal 20% of the funds credited the preceding month to the plaintiff’s trust account to the U.S. District Court for the District of South Dakota Clerk of Court until the \$505.00 appellate filing fee is paid in full.

3. The Clerk of Court shall send a copy of this order to the appropriate official at the institution where plaintiff is incarcerated.

DATED this 10th day of January, 2022.

BY THE COURT:

A handwritten signature in cursive script, reading "Charles B. Kornmann". The signature is written in dark ink and is positioned above the printed name and title.

CHARLES B. KORNMANN
United States District Judge